IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court’s order whether the case is or not approved for reporting

Chapter VIII, Rule 32(2) (b)

Description of case

W.P. 239 OF 2003, Decided on 08.08.2003
Inder Singh & others ---------Petitioners
Vs.
Deputy Director of Consolidation, Hardwar and others ------Respondents

A.F.R. (Approved for Reporting)
_____

~~Not approved for reporting~~

Date Initials of Judge

Note- Bench reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 239 (M/S) of 2003

CIVIL SIDE

Inder Singh & others ---Petitioner

Versus

Deputy Director of Consolidation, Hardwar
And others ---Respondents.

Hon'ble Rajesh Tandon J.

This writ petition has been filed for issuing directions to the lower appellate court to pass appropriate order on the stay application of the petitioners filed in Appeals No. 1033 of 2002 and 1034 of 2002, Inder Singh and others vs. Musamat Garibani Dei and others.

Brief facts of the case are that against the order passed by the Assistant Consolidation Office recording he names of respondents no.4 to 8 as co-sharers with the petitioner, the petitioners preferred appeals No. 1033 of 2002 and 1034 of 2002 before the Assistant Settlement Officer, regarding plots no.29 and 35. On 7.3.02, the Assistant Settlement Officer suspended the operation of the order dated 2.8.2001. On the application dated 27.5.2002 moved by respondent Smt. Mehandi the Assistant Setttlement Officer, Consolidation vacated the interim order on 29.5.2002. Against the orders dated 29.5.20002, 13.5.2002 and 4.5.2002 were challenged by the petitioners by filing two Revisions No. 638 of 2002 and 639 of 2002 before the Deputy Director of Consolidation, Hardwar. The

revisional Court vide order dated 4.12.2002 has allowed the revision and directed the appellate court to consider the stay matter.

Heard Sri Narain Singh Negi, counsel for the petitioner, learned Standing Counsel and Sri Sharad Sharma for the respondents.

Order sheet of Settlement Officer of Consolidation dated 20.12.2002 reads as under:

vkt irkoyh i'k gbA vkt gh ;s irkoyh ikRk gbZ A LVs ij cgl lquh x;h gSA irkoyh okLrs vkns'k fn0 27-12-2002 dks i'k gkA

I have perused the counter affidavit filed by Sri Sharad Sharma. In paragraph 18 of the counter affidavit it has been mentioned that this Hon'ble Court may issue appropriate directions to the respondent no.2 to deliver the judgment on the application of the petitioner. Surprisingly the said matter was heard on 20.1.22002 but no order has been passed after expiry of a long period. The grievance of the petitioners, therefore, is that the lower appellate court may be directed to deliver order on the stay application.

In my opinion grievance of the petitioners is well founded. Delay in delivering the order is not warranted in a circumstance where there were directions in two revisions i.e. Revision no. 638 of 2002 and 639 of 2002 to the appellate authority to decide the appeal.

In the case *Mool Chand Yadav and another vs. Raza Buland Sugar Co. Ltd. Rampur and others (1983 A.W.C. 121)* similar matter came up before the Apex Court where in a Civil matter their Lordships have observed as under:

"But if orders are challenged and the appeals are pending, one cannot permit a swinging pendulum continuously taking place during the pendency of the appeal."

In view of the aforesaid observations of the Apex Court justice oriented approach requires that the parties shall maintain status quo during the pendency of the appeal.

The writ petition is, therefore, disposed of with the direction that the Settlement Officer of Consolidation, Hardwar shall decide the appeals within a period of one month after receipt of certified copy of this order.

(Rajesh Tandon, J.)

8.08.2003
***Dhyani**